IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRIMINAL REVISION NO.2528 OF 2003

DATE OF DECISION: NOVEMBER 21,2006

BY ORDER

CORAM:- HON'BLE MR.JUSTICE RANJIT SINGH

PRESENT: Ms. G. K. Mann, Advocate.

Mr. J. S. Chandail, AAG, Punjab.

RANJIT SINGH, J.

A reference made by Additional District and Sessions Judge, Amritsar, to this court in FIR No.26 of 2003 under Sections 307, 325, 323, 34 IPC in a case titled State Vs. Milkha Singh etc., has been treated as a Criminal Revision and placed before Court. Additional Sessions Judge, who was holding the trial in the above noted case, faced a predicament. This case had been committed to the Sessions Court by S.D.J.M., Ajnala against Milkha Singh and Jagjit Singh. An application under Section 319 Cr.P.C. was moved by the prosecution to summon one Gurjit Singh as an accused, who had been placed in Column No.2 in the report filed under Section 173 Cr.P.C. This application was contested before the Court by the accused who were present by saying that no additional person could be summoned as an accused to face trial without recording evidence. While disposing this application, the Additional Sessions Judge, has made the present reference, indicating that without summoning Gurjit Singh, it is difficult to frame charge against the other accused under Section 307 IPC as Gurjit Singh, shown in Column No.2, is the main accused whereas other persons before the

Court, could be charged only with the help of Section 34 IPC. Additional Sessions Judge has referred to judgment of Hon'ble Supreme Court titled *Ranjit Singh Vs. State of Punjab,* 1998 (4) RCR (Criminal) 552 to say that in such a situation, the matter is required to be reported to the higher Court so that it can, in exercise of its inherent or revision powers, direct the Committing Magistrate to rectify the committal order by issuing process to such left out accused. He has accordingly made a reference to this Court seeking direction on judicial side for rectification of the committal order, by issuing process to such left out accused. It is in this background that the case has been placed for orders on the judicial side.

The issue raised in the present reference that whether Sessions Judge could add a new person as an accused in a case at a stage prior to collecting evidence did arise in Ranjit Singh's case (supra). In fact, prior to Ranjit Singh's case, Supreme Court in Kishun Singh Vs. State of Bihar, 1993 (2) SCC 16 had held that though additional accused could not be summoned to face trial under the provisions of Section 319 Cr.P.C. prior to recording of evidence, yet the Sessions Court could legally do so by invoking the provisions of Section 193 Cr.P.C. This view was re-affirmed by Hon'ble Supreme Court in Nissar Vs. state of U.P., 1995 (2) SCC 23. However, Hon'ble Supreme Court in the case of Rajkishore Prasad Vs. State of Bihar, 1996 (4) SCC 495 expressed certain reservations about the legal position propounded in Kishun Singh's case (supra) and accordingly this question was referred for consideration by a Larger Bench and it is in this background that the judgment in Ranjit Singh's case (supra) was rendered. After referring to various judgements, the Hon'ble Supreme Court in the case of Ranjit Singh (supra), held as under:-

"16. It is clear that during the said stage the Court of Session can deal only with the accused who is referred to in Section 209. The accused who can appear or can be brought before a Session Court at that stage is only that accused who is referred to in Section 209. Section 227 deals with the power of the court to decide whether that accused is to be discharged or not. If he is not discharged the Session Court is obliged to frame a charge against the accused as per Section 228 of the Code. Thereafter the plea of that accused has to be recorded as enjoined by Section 229. The stage of evidence collection commence only next. (vide Sections 230 & 231 of the Code);

17. So from the state of committal till the Session court reaches the stage indicated in Section 230 of the Code that Court can deal with only the accused referred to in Section 209 of the Code. There is no intermediary stage till then for the Session Court to add any other person to the array of the accused.

18. Thus, once the Session Court takes cognizance of the offence pursuant to the committal order the only other stage when the Court is empowered to add any other person to the array of the accused is after reaching evidence collection when powers under Section 319 of the Code can be invoked. We are unable to find any other power for the Session Court to permit addition of new person or persons to the array of the accused. Of course it is not necessary for the court to wait until the entire evidence is collected for

exercising the said powers."

Having so held, the Hon'ble Supreme Court noticed that one question still survived for an answer. Hon'ble Court then referred to a situation where the Sessions Judge was to notice from the material produced but before any evidence is taken, that any other person should also have necessarily been made an accused, without which the framing of the charge would be defective. It went on to notice that would the Sessions Judge then be completely powerless to deal with such a contingency? In this regard, the Hon'ble Supreme Court referred to another situation where the material produced by the investigating agency was to show positive involvement of a person who had not been arrayed as an accused due to inadvertence or omission, then was the Court to wait until the evidence was collected? Answering these situations, the Hon'ble Supreme Court held as under:-

> "21. Though such situations may arise only in extremely rare cases the Session Court is not altogether powerless to deal with such situations to prevent miscarriage of justice. It is then open to the Session Court to send a report to the High Court detailing the situation so that the High Court can in its inherent powers or revisional powers direct the committing Magistrate to rectify the committal order by issuing process to such left out accused. But we hasten to add that the said procedure need be resorted to only for rectifying or correcting such grave mistakes."

It would be, thus, noticed that Kishun Singh's case (supra) though was not specifically over-ruled by Ranjit Singh's case (supra) but

was even not followed. Nissar's case (supra) again was not over-ruled but impliedly not followed. Since Ranjit Singh's case (supra) has specifically dealt with the ratio laid down in Kishun Singh's case and Nissar's case (supra) on being referred to a larger Bench, it would be reasonable to assume that ratio laid down in these two cases may not be open to be followed, though these cases were not specifically over-ruled. This would be necessary as the situation which is in hand, had clearly been anticipated and visualised by the Hon'ble Supreme Court and answered as well. The situation, which, as per the appreciation of the Supreme Court was to arrive in an extremely rare case has so arisen in this case. In the present case, the material produced by the investigating agency apparently shows the positive involvement of a person who has been shown in column No.2 but not in the array of accused. It is not clear as to whether this is because of any inadvertence or omission. The Additional Sessions Judge has clearly noticed that from the material and the record placed before him, a charge cannot be framed against the person produced as an accused unless Gurjit Singh is also made as an accused in this case. It was in this context that the Hon'ble Supreme Court noticed that Sessions Court would not be powerless to deal with such a contingency. In fact, to highlight such a situation, the Hon'ble Supreme Court in Ranjit Singh's case (supra) has referred to an illustration narrated in Kishun Singh's case (supra), which reads as under:-

> "Where two persons A and B attack and kill X and it is found from the material placed before the Judge that the fatal blow was given by A whereas the blow inflicted by B had fallen on a non-vital part of the body of X. If A is not challaned by the police, the Judge may find it difficult to charge B for the

> murder of X with the aid of Section 34 IPC. If he cannot summon A, how does he frame the charge against B?".

It is to deal with such a situation that the Hon'ble Supreme court observed that it would be open to the Sessions Court to send a report to the High Court detailing the situation so that High Court can exercise its inherent powers or revisional powers to direct the Committing Magistrate to rectify the committal order by issuing process to such left out accused. As a word of caution, the Hon'ble Supreme Court has further observed as under:-

> "But we hasten to add that the said procedure need be resorted to only for rectifying or correcting such grave mistakes."

The situation, as such has arisen where the exercise of inherent or revisional powers could have been exercised for correcting this mistake or omission. However, it has been noticed that even Ranjit Singh's case (Supra), has been doubted by Hon'ble Supreme Court and matter has been referred to a larger Bench by the Hon'ble Supreme Court in Dharam Pal and others Vs. State of Haryana and another, (2006) 1 Supreme court Cases (Cri.) 273. The relevant observations in that regard are as under:-

> "3. Prima facie, we do not think that the interpretation reached in ***Ranjit Singh case*** is correct. In our view, the law was correctly enunciated in ***Kishun Singh case.*** Since the decision in ***Ranjit Singh case*** is of three Judge Bench, we direct that the matter may be placed before the Hon'ble the Chief Justice for placing the same before a larger Bench."

If the law as enunciated in Kishun Singh's case (supra) is held to be correct, then the case would not have to be referred back to the Magistrate but the omission could be corrected by the Court of Additional

Sessions Judge. Otherwise, the case would have to be sent back to Magistrate in terms of the law laid down in Ranjit Singh's case (supra). Hon'ble Supreme Court has noticed the effect of Ranjit Singh's case, whereby Magistrate in less serious offence triable by him, would have the power to proceed against those who are mentioned in column No.2 but as far as serious offences triable by Court of Sessions are concerned, that Court will have to wait till the stage of Section 319 of the code is reached. In view of the above discussion, there are two options available now and these are either to wait the outcome of the reference in Dharampal's case (supra) or to follow Ranjit Singh's case, as that is the law till a different view is taken in the reference. Having considered this issue deeply, it is felt that end result is to determine the manner in which additional accused is to be added. Need to add Gurjit Singh as an accused is not in dispute. What is required to be seen is the manner in which it is to be done. Since, as on date ratio in Ranjit Singh's case is law and it can safely be followed, especially when even if the same is reviewed, the end result will not get effected but only a mode of adding accused may change.

Accordingly, I am inclined to allow this reference especially so when the same is pending since 2003 and deferring the same to await decision in Dharampal's case, would further delay the criminal trial. Consequently, the present revision is allowed and the case is remanded back to the Magistrate to pass appropriate order under law in regard to adding Gurjit Singh as an additional accused. It is required to be noticed that no objection was raised before me for adding Gurjit Singh as an accused in the case.

The reference is accordingly answered. Let the papers of the

case be sent to Sub Divisional Judicial Magistrate, Ajnala, for passing appropriate orders for rectification of the committal order by issuing process to Gurjit Singh, left out accused, if it is so considered appropriate under law.

November 21 , 2006 **(RANJIT SINGH)**
khurmi **JUDGE**

It is noticed that Gurjit Singh has been found to be the main accused under Section 307 of the IPC but had been placed in Column No.2 in report under Section 173 Cr.P.C. The notice had been issued to said Gurjit Singh as any order was likely to effect him so that he could have an opportunity of hearing. It has been reported that he has refused to take notice and the same had been affixed at his residence. It may be taken as an service in the eyes of law.